



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
<http://www.epa.gov/region08>

**July 11, 2003**

Ref: 8ENF-T

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Michael Touff  
Registered Agent for Richmond Homes  
of Colorado, Inc.  
Suite 900  
3600 S. Yosemite Street  
Denver, CO 80237

Re: Administrative Order under the  
Clean Water Act 33 U.S.C. § 309(a)

Dear Registered Agent:

Enclosed is a United States Environmental Protection Agency Region 8 ("EPA") Administrative Order ("Order") issued to Richmond American Homes of Colorado, Inc. The Order specifies the nature of the violations under the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq. (the "CWA"). The authority for such action is provided to EPA under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). The Order describes the actions necessary in order for Richmond American Homes of Colorado, Inc. to achieve compliance with the CWA.

The CWA requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any Orders issued thereunder. Section 309 of the CWA provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Section 508 allows for debarment from Federal contracts and/or loans for any noncompliance with the CWA or with an Order issued pursuant to the CWA (33 U.S.C. § 1368). Also enclosed is a memorandum from the Colorado Department of Health and Environment regarding EPA enforcement proceedings in CO.



Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of said Order. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to compliance with the CWA, the most knowledgeable people on my staff regarding these matters Julie Orr, Technical Enforcement, at (303) 312-6225, and David J. Janik, Supervisory Enforcement Attorney, at (303) 312-6899.

Sincerely,

**A. M. Gaydosh for/**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

cc: Tina Artemis, Regional Hearing Clerk  
Mark Pifher, CDPHE



found at 40 C.F.R. part 122.

8. EPA regulations define discharges associated with industrial activity to include construction activity. 40 C.F.R. § 122.26(b)(14)(x).

9. EPA regulations require each person who discharges storm water associated with industrial activity to either apply for an individual permit or seek coverage under an existing and lawful general permit. 40 C.F.R. § 122.26(c).

10. The State of Colorado has lawfully issued a general permit, under the authority of State law and the Act, which authorizes the discharge of storm water associated with construction activities, if done in compliance with the conditions of the permit. The State of Colorado issued permit no. COR- 0333751 to Richmond American Homes of Colorado, Inc. on June 21, 2002, which provided coverage under COR-030000. Colorado permit no. COR-030000; attached as exhibit A (“permit”).

11. The permit requires, among other things, that a person discharging pollutants develop and implement an adequate storm water management plan (SWMP), conduct regular specified storm water inspections, and implement best management practices (“BMPs”). BMPs include structural controls (such as sediment ponds and silt fences) and management practices (such as a dedicated concrete washout area and street sweeping).

12. Respondent (Richmond American Homes of Colorado, Inc.) is a corporation, incorporated in the State of Delaware and doing business in the State of Colorado.

13. Respondent is a “person” within the meaning of section 502(5) of the Act, and therefore subject to the requirements of the statute and/or regulations. 33 U.S.C. § 1362(5).

14. Respondent own or is engaged in construction activities at a facility located at East Lake and Highway 83, Centennial, Colorado, (“facility”).

15. Respondent engaged in construction activities at the facility at all times relevant to this action.

16. Respondent is therefore engaged in an “industrial activity” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(14).

17. Storm water, snow melt, surface drainage and run off water leaves Respondent’s facility and goes into Piney Creek and an unnamed tributary to Cherry Creek Reservoir.

18. The run off and drainage from Respondent’s facility is “storm water” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).

1 19. Storm water contains “pollutants” as defined by the Act. 33 U.S.C. § 1362(6).

2  
3 20. Piney Creek, a tributary of Cherry Creek Reservoir, and Cherry Creek Reservoir are  
4 “navigable waters” and “waters of the United States,” as defined by the Act and EPA regulations,  
5 respectively. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

6  
7 21. Respondent’s storm water runoff is the “discharge of a pollutant” as defined by EPA  
8 regulations. 40 C.F.R. § 122.(b)(14)(x).

9  
10 22. An authorized EPA employee entered the facility with the consent of Respondent on  
11 July 3, 2002, to inspect it for compliance with the statute, permit and regulations. The counts  
12 below outline violations confirmed by the inspector.

13  
14 23. Construction activities disturbing over five acres commenced at the facility on  
15 June 1, 2001.

16  
17 24. Section 301 of the Act and the storm water regulations at 40 C.F.R. § 122.26 require  
18 that a storm water permit be obtained for construction activity including clearing, grading and  
19 excavation disturbing at least five acres. Respondent is covered under the permit and subject to  
20 its terms and conditions.

21  
22 **COUNT 1**

23  
24 25. As of the date of the inspection, Respondent had not developed a SWMP.

25  
26 26. Respondent’s failure to develop a SWMP at least 10 days prior to the commencement  
27 of construction as required by the permit constitutes violations of the Act. 33 U.S.C. § 1319,  
28 § 1342.

29  
30 **COUNT 2**

31  
32 27. Respondent failed to conduct inspections as required by the permit.

33  
34 28. Respondent’s failure to conduct inspections as required by the permit constitutes  
35 violations of the Act. 33 U.S.C. § 1319, § 1342(p).

36  
37 **COUNT 3**

38  
39 29. The permit requires Respondent to implement best management practices (BMPs) in  
40 order to minimize the impact of Respondent’s construction activities on waters of the United  
41 States. At the time of the inspection, the following BMPs were not in place or were not being  
42 implemented: no BMPs were in place along Piney Creek; sediment was flowing into wetlands  
43 connected to Piney Creek; no dedicated concrete wash out area had been established; screens

1 covering storm drains were not being properly maintained.

2  
3 30. Respondent's failure to implement BMPs is required by the permit and constitutes  
4 violations of the Act. 33 U.S.C. § 1319, § 1342(p).

5  
6 **ORDER**

7  
8 Respondent is ordered to perform the following actions:

9  
10 31. Within 10 days of receipt of this administrative order ("Order"), submit written  
11 notice of intent to comply with the requirements of this Order.

12  
13 32. Within 10 days of receipt of this Order, submit a copy of the Notice of Intent and the  
14 renewed permit in order to demonstrate continual compliance with Colorado General Permit No.  
15 COR-030000, effective July 1, 2002.

16  
17 33. Within 30 days of receipt of this Order, develop a complete storm water management  
18 plan in accordance with the permit. Submit a copy of the complete storm water management  
19 plan within 35 days of receipt of this Order.

20  
21 34. Respondent must implement all conditions in its SWMP in accordance with its  
22 permit.

23  
24 35. Within 30 days of receipt of this Order, ensure that inspections are being conducted  
25 as outlined in the SWMP and at least meet the minimum requirements of the permit.

26  
27 36. Submit copies of inspection reports quarterly, 10 days after the end of each calendar  
28 quarter (October 10, 2003, January 10, 2004, April 10, 2004, and July 10, 2004, etc.) for the life  
29 of the construction project.

30  
31 37. Within 45 days of receipt of this Order, submit written documentation, including  
32 photographs, that best management practices have been developed and implemented, including  
33 but not limited to: erosion control measures along Piney Creek, erosion control measures  
34 preventing sediment flowing into wetlands, remedial measures addressing sediment loading into  
35 the wetlands area, establishment of a dedicated concrete wash out area, and adequate BMPs at  
36 storm drain inlets. Implement all required BMPs in accordance with the permit and the SWMP  
37 for the life of the construction project.

38  
39 38. Upon final stabilization of the facility, submit an Inactivation Notice as required in  
40 the permit, and submit a copy of the Inactivation Notice to the parties in paragraph 40.  
41  
42

## OTHER PROVISIONS

39. EPA regulations protect confidential business information. 40 C.F.R. part 2, subpart B. If Respondent assert a business confidentiality claim pursuant to these regulations for information required to be submitted under this order, such information shall only be provided to EPA. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in the regulations. Unless a confidentiality claim is asserted at the time the information is submitted, the information shall be provided to both EPA and the Colorado Department of Public Health and Environment as specified below, and EPA may make the information available to the public without further notice to you.

40. All written notices and reports required by this Order shall be sent to the following addresses:

Julie Orr (8ENF-T)  
U.S. EPA Region 8  
Office of Enforcement, Compliance  
and Environmental Justice  
Technical Enforcement Program  
999 18<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202-2466

Scott Klarich (WQP-P)  
Colorado Department of Health  
and Environment  
Water Quality Control Division  
Water Quality Section  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

41. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.

42. This Order does not constitute a waiver or modification of the terms and conditions of Respondent's Colorado Discharge Permit System permit which remains in full force and effect, or of any other legal responsibilities or liability.

43. This Order does not constitute a waiver of or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. The Act authorizes the assessment of civil penalties of up to \$27,500 per day for each violation of the Act, and fines and imprisonment for willful or negligent violations. 33 U.S.C. § 1319.

Date: 7/9/03

By: SIGNED

Carol Rushin

Assistant Regional Administrator

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JULY 11, 2003.**